CANADlAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 646

Heard at Montreal, Tuesday, December 13, 1977

Concerning

CANADlAN NATIONAL RAlLWAY COIIPANY

and

BROTHERHOOD OF LOCOMOTlVE ENGlNEERS

DISPUTE:

Time claims of Locomotive Engineer W.H. Eyre, Winnipeg, Manitoba.

JOlNT STATEMENT OF lSSUE:

Locomotive Engineer W.H. Eyre was assigned to one of three assignments handling passenger trains 1 and 2 between Winnipeg, Manitoba, and Sioux Lookout, Ontario. Due to the long hours involved with short time off at the distant terminal, the Company changed the layover time of the assignments at Sioux Lookout.

Prior to implementing the change effective October 31, 1976, the employees concerned including claimant were fully informed thereof at several meetings between the parties, and at which time the Brotherhood representatives requested that the assignments be not rebulletined as provided in Paragraph 92.11 of Article 92, the Company concurred with the request.

Subsequently, Loco. Engineer Eyre submitted time claims for various dates in November, December, 1976, and January, February and March 1977 claiming excessive layover at Sioux Lookout on the grounds that change in the assignments was not warranted since there was no change in the operating schedule of trains 1 and 2. The Company declined the claims and the Brotherhood contends that in so doing, paragraph 75.1 of Article 75 was violated by the Company.

Similar claims in differing amounts were submitted by other Locomotive Engineers during the same period, which were also declined by the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) A. J. SPEARE General Chairman	(Sgd.) S. T. COOKE Assistant Vice-President Labour Relations

There appeared on behalf of the Company:

A. J. DelTorto	Senior System Labour Relations Officer, CNR, Montreal
J. A. Cameron	Regional Labour Relations Officer, CNR,

	Winnipeg
J. H. Meneer	Labour Relations Assistant, C.N.R., Winnipeg
R. E. Mackinnon	Superintendent, C.N.R., Winnineg.
D. I. Small	Assistant Superintendent, C.N.R., Winnipeg

And on behalf of the Brotherhood:

A. J. Speare	General Chairman, B.L.E., Edmonton
E. J. Davies	Vice President, B.L.E., Montreal
M. Prystaylo	Local Chairman, B.L.E., Winnipeg
J. Ball	Local Chairman, B.L.E., Regina
W. H. Eyre	(Grievor)

AWARD OF THE ARBlTRATOR

Prior to the change referred to in the joint statement, the grievor's assignment involved a run of approximately 6 hours and 15 mlnutes from Winnipeg to Sioux Lookout, a layover of approximately 1 hour and 15 minutes in Sioux Lookout, and a return run of approximately 6 hours and 15 minutes from Sioux Lookout to Winnipeg. This assignment involved the grievor's going on duty in Winnipeg at 1740 hours one day, and off duty at 1200 hours on his return to Winnipeg the next day, the only interruption in his time on duty being the l hour and 15 minutes layover in Sioux Lookout.

ln deciding to change this assignment because of the long hours involved the Company acted in the exercise of its managerial rights. The change was not an arbitrary one nor was it made for the purpose of unfairly discriminating against the grievor. The Company subject to any restrictions in the collective agreement may determine what its assignments shall be and an arbitrator has no jurisd1ction to determine whether changes in assignments are wise or not. lt may be that in other situations the Company has not exercised (or perhaps not been in a position to exercise) the same discretion, and has allowed enginemen to work protracted hours. That does not affect the propriety of the decision taken in this case.

The change in assignment effected by the Company results in the extension of the grievor's layover in Sioux Iookout by some 24 hours. He no longer returns to Winnipeg with train No.1 on the day of his arrival in Sioux Lookout with train No.2; he departs with the next following train No.1, the next day. He now goes off duty in Winnipeg on the second day after coming on duty. In this grievance, he seeks payment for excessive lavover.

One of the grounds on which the claim is based is that the change in timetable was "not warranted". That, as I have indicated, is not a matter over which an arbitrator has jurisdiction under the collective agreement. The grievance, therefore cannot succeed on this ground.

Article 75, on which the claim is also based, provides for payment for time held at away from home terminal where an assIgned run is delayed for more than seven hours "bevond the advertised time of departure". If it is to be considered that, in holding the grievor until the next following train No.1 (that is, for an additional day),

the Company held him "beyond the advertised time of departure". then the grievance would succeed. Since the assignment was changed to "advertise" this change, it would not anpear that the grievor was so held. This conclusion would be avoided, however, if the change in assignment was in violation of the collective agreement.

Article 92.11 of the collective agreement provides as follows:

> "92.11 An assigned run either local or district shall be re-advertised when there is a change in:
>
> the days of lavover,
> the number of trips per week, or
> the mileage, to the extent of 25 road miles or more each round trip.''

In the instant case it appears clear to me that a change of layover from 1 hour and 15 minutes to 25 hours and 20 minutes, as was the case here, amounts to a change in "the days of lavover", within the meaning of that article. One would imagine it would also affect the number of trips per week but I make no finding ar to that. Obviously the change would have a significant effect on the arrangement of the grievor's life. It was, in my view, the sort of change by virtue of which the assignment should have been re-bulletined.

It is stated in the ioint statement that Protherhood representatives requested that the assignment not be rebulletined and that the Company concurred with the reouest. The grievor himself filed his own statement of facts which differs somewhat from that of the parties in this respect. The procedure is not one which is contemplated by the collective agreement or by the Memorandum establishing the Canadian Railway Office of Arbitration. While it may be that joint statements should be read broadly and not restrictively, the parties are, as a general matter, bound by what they have agreed to, and cases are to be dealt with on that basis.

In the instant case, nothing turns on the agreement, if it was such, of the parties not to rebulletin the assignment in question. The local union officer who is said to have made such agreement did not have authority to do so, and the Company was not justified in failing to comply with the collective agreement. The assignment was in fact rebulletined on February 14, 1977. The grievor applied on that bulletin (under objection) and was successful.

The grievor's objection to the bulletin was, for the reasons I have stated, invalid. The Company was entitled to change the assignment. From February 14, 1977, and thereafter, the grievor must be taken to have accepted the assignment as it then was, and he is entitled to be remunerated accordingly. Until such time, however, since the assignment had not been rebulletined as required by the Colelctive Agreement, the grievor was being delayed "beyond the advertised time of departure" at Sioux Lookout and would be entitled to payment pursuant to Article 75.

To the extent that the grievor is entitled to compensation in respect of the period from October 31, 1976, to February 14, 1977, the grievance is allowed.

J.F.W. WEATHERILL
ARBITRATOR